IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 25568 of 2006(R)

PETITIONER:

M.O.PUSHPENDRAN, DEPUTY DIRECTOR (GENERAL), C/O.THE DIRECTORATE OF VOCATIONAL EDUCATION, THIRUVANANTHAPURAM.

BY ADV. SRI.K.RAMAKUMAR.

RESPONDENTS:
----

1. **THE SECRETARY TO GENERAL EDUCATION DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**
2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

BY SR. GOVERNMENT PLEADER SRI. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.25568/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE EXTRACT OF THE SENIORITY LIST OF GZETTED OFFICERS IN THE TEACHING BRANCH OF THE EDUCATION DEPARTMENT AS ON 01/01/2003.

EXT.P.2: COPY OF THE SELECT LIST OF OFFICERS FOR PROMOTION ISSUED BY R1, DTD. 25/07/2006.

EXT.P.3: COPY OF THE ORDER DTD. 11/02/2005 ISSUED BY THE GOVERNMENT.

EXT.P.4: COPY OF THE REPRESENTATION DTD. 29/12/2005 SUBMITTED BY THE PETITIONER BEFORE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

V.GIRI,J.

W.P.(C) No. 25568 of 2006

Dated this the 24th day of September, 2007

JUDGMENT

The petitioner, working as a Deputy Director (General) in Vocational Higher Secondary Education, is aggrieved by the fact that he was not considered for promotion to the post of Joint Director in the General Education Department. In Ext.P1 provisional seniority list of Gazetted Officers in the Teaching Branch of the Education Department under the DPI as on 1.1.2003, the petitioner Sri.Pushpendran is Sl.No.14 and Sri.N.Thyagarajan is Sl.No.16. The petitioner contends that Departmental Promotion Committee was convened in 2005 for considering the eligible persons for promotion to the post of Joint Director. Thereafter the petitioner's junior was included in the select list. The petitioner was not considered by the Departmental Promotion Committee on the premise that disciplinary proceedings is pending against the petitioner. Situation continues even now. The petitioner's representation Ext.P4 has not been considered and hence the writ petition.

2. Counter affidavit has been filed on behalf of the Government in which it is pointed out that the name of the petitioner was not considered by the Departmental Promotion committee (Higher) at its meeting was held on 30.5.2006 for the reason that disciplinary action is pending against the petitioner and Sri.Thyagarajan, who is petitioner's junior, was included in the

select list. Enquiry officer has conducted an enquiry, and apparently, it was found that the delinquent officer, namely, the petitioner failed to give due importance to the standing instructions and orders of Government from time to time. In the meanwhile, Vigilance and Anti-corruption Bureau has informed that a Vigilance enquiry is being conducted into the allegations made against the petitioner for unauthorised collection of money from the Headmasters of Aided and Government Schools and private establishments for various purposes.

3. I have heard the learned counsel for the petitioner as also the Senior Government Pleader Sri.Nandakumar.

4. Pendency of departmental proceedings or even a vigilance enquiry cannot be a reason to completely exclude the consideration of a Government servant, by the Departmental Promotion Committee. In the circumstances, what is contemplated is that the confidential reports for the three years prior to the convening of the Departmental Promotion Committee should be considered and the sealed cover procedure should be adopted. The disciplinary proceedings initiated against the petitioner have not been completed so far.

5. In the circumstances, the procedure contemplated by Rule 28(b)(i)(vii) shall be adopted. Merits and suitability of the petitioner should also be assessed by the Departmental Promotion Committee, as and when convened, while considering the suitability of persons for promotions to the post of Joint Director. The findings as to the suitability of the petitioner, shall be recorded separately, if the disciplinary proceedings on the vigilance enquiry pending

against the petitioner have not attained a finality, at that point of time.

Subject to the above directions, this writ petition is disposed of.

V.GIRI, JUDGE

css/